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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,960	10/29/2003	Brian Mann	SAVCOR.1C2P1C1	7617
20995	7590	03/17/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			LAYNO, CARL HERNANDZ	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/697,960	MANN ET AL.
	Examiner <i>Carl H. Layno</i> Carl H. Layno 3/15/05	Art Unit 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-99 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-5, 7-71 and 82-99 is/are allowed.
- 6) Claim(s) 6 and 72-74 is/are rejected.
- 7) Claim(s) 75-81 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 29 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/23/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for priority as a Continuation of U.S Application Serial No. 10/698,031, filed October 29, 2003, which is a Continuation-In-Part of U.S Application Serial No. 10/127,227, filed April 19, 2002, which is a Continuation of U.S Application Serial No. 09/956,596, filed on September 19, 2001, now Abandoned, which is a Continuation of U.S Application Serial No. 09/481,084, filed on January 11, 2000, now U.S Patent 6,328,699. The current application also claims benefit of U.S Provisional Application 60/470,468, filed on May 13, 2003.

### ***Information Disclosure Statement***

2. Acknowledgment is made of applicant's Information Disclosure Statement (PTO-1449), which was received by the Office on April 23, 2004.

### ***Drawings***

3. Applicant's drawings appear to be informal (see PTO-948 for Draftsperson's comments) and are acceptable for Examination purposes only.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, in line 2 of claim 6, the words “further comprises further comprises” is redundant and confusing. To overcome this indefiniteness, the Examiner recommends omitting one set of the words “further comprises”.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 72-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salo '283 in view of Stone et al '607.

The Salo '283 patent describes a method and apparatus for pacing patients with severe congestive heart failure (CHF) in which the pacer 10 (Fig. 2) includes both ECG sensing circuits 22,24 and a pressure sensor 41. In use, the aortic pressure signals monitored by the sensor 41 of Salo is used to derive an optimum AV interval delay value (Abstract) for the pacer, which would inherently affect the pacer's ventricular stimulation timing, since it operates in VDD mode (col.1, line 42). Unlike applicant's device, however, that of Salo does not communicate its sensed pressure data to an external device for processing.

The Stone et al '607 patent also describes an implantable pacemaker (Fig. 2), which communicates monitored parameters including AV intervals to an external programmer having a display screen (Fig. 7) for showing this parameter to a physician or user.

Lacking any criticality, to have specified the programmer of Stone et al '607 for use with the implantable pacemaker of Salo '283 would have been an obvious substitution to one of ordinary skill since both devices process AV interval information derived from pressure sensors (see col.2, lines 3-7 of Stone '607) with Stone et al providing a display screen to view it.

*Allowable Subject Matter*

8. Claims 75-81 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 1-5, 7-71, and 82-99 are allowed.

10. The following is a statement of reasons for the indication of allowable subject matter:

The Examiner could not find any reference(s) that taught applicant's claimed steps involving the sensing of left atrial fluid pressures, the generation of an output indicating a treatment, and the providing of at least two distinguishable treatment signals to the patient (independent claims 1, 68, 71, 82). In addition, the Examiner could not find the claimed combination of "generating a sensor signal indicative of fluid pressure within a left atrium", "transmitting said sensor signal...to an external telemetry device", and "communicating said

treatment signal...to said medical patient" (claim 69). Lastly, the Examiner could not find the claimed method steps involving "determining fluid pressure within the left atrium" by "obtaining the atmospheric pressure" as stipulated in claim 70. Consequently, the Examiner deems these claims and their depending claims to be allowable.

11. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Cohen '752 patent is cited for its pertinent disclosure of an implantable medical device having a left atrium pressure sensor 20 (Fig. 2E). Unlike applicant's device, that of Cohen fails to disclose the use of "two treatment signals".

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message ([carl.layno@uspto.gov](mailto:carl.layno@uspto.gov)) may be left if desired.

Art Unit: 3762

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (571) 272-4955. All Faxed correspondence should be sent to the Office's official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (571) 272-4399.



CARL LAYNO  
PRIMARY EXAMINER

CHL

3/15/2005